In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1243

SAMUEL M. BRIN AND RALPH SERPICO, PETITIONERS

v.

UNITED STATES OF AMERICA AND BERNARD C. CAREY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners contend that the district court erred in ordering the United States to disclose certain grand jury minutes to the State's Attorney for Cook County, Illinois.

Two grand juries in the Northern District of Illinois returned separate indictments charging petitioners, former deputy assessors in Cook County, with having used interstate facilites to promote bribery in violation of Illinois law, in violation of 18 U.S.C. 1952. Petitioners Brin and Serpico pleaded guilty on December 8, 1972, and April 17, 1973, respectively.

On May 4 and 8, 1973, the State's Attorney of Cook County filed civil suits against petitioners in state court seeking, on behalf of Cook County, to recover money received by petitioners as bribes.

On May 17, 1973, the State's Attorney presented a motion to the district court under Rule 6(e), Fed. R. Crim. P., for production of grand jury minutes relevant to petitioners' indictments on the ground that the minutes were essential to the successful prosecution of the civil suits. The United States informed the court that it did not object to disclosure. On June 1, 1973, after hearing arguments in opposition from petitioners' counsel, the district court ordered the United States to turn over to the State's Attorney those grand jury minutes relevant to petitioners' violations of 18 U.S.C. 1952, with the restriction that the minutes be utilized only in connection with the civil suits to recover the bribe money and solely for purposes of discovery or impeachment.

Petitioners appealed. The United States informed the court of appeals that it continued to have no objection to disclosure of the grand jury minutes and adopted in full the brief of the State's Attorney. The court of appeals affirmed (Pet. App. A).

In its opinion, upon which we rely, the court of appeals sustained the district court's finding that the State had demonstrated a "particularized need" for the minutes (see *United States* v. *Proctor & Gamble*, 356 U.S. 677, 683), which justified disclosure under Rule 6(e). The court of appeals held that the public interest in the secrecy of grand jury proceedings would not be compromised, because the grand juries involved had been discharged and petitioners convicted; the court further noted that petitioners had pointed to no untoward effects which might result from disclosure (Pet. App. 2-3). The court concluded that "the state and federal governments should cooperate fully where the dishonesty and infidelity of public employees is involved * * *" (Pet. App. 3).

The disclosure of grand jury minutes is entrusted to the sound discretion of the district court. *Pittsburgh Plate Glass Co.* v. *United States,* 360 U.S. 395. In the particular circumstances of this case, the district court did not abuse its discretion in finding that the State's showing of need warranted a disclosure of grand jury minutes for the limited purposes of discovery and impeachment.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

MAY, 1974.